

Comment on A National Broadband Plan For Our Future
Notice of Inquiry, FCC GN Docket No. 09-51.

The American Recovery and Reinvestment Act (ARRA) aims at building a new economic foundation for the United States by providing, "job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed," et cetera. As one step towards these goals, the ARRA mandates that the FCC deliver a National Broadband Plan to Congress by February 17, 2010.

The National Broadband Plan mandated in Section 6001(k)(2) of the ARRA makes clear that its objectives are for, "all people of the United States . . . the public . . . [for] advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes." It would be impossible to achieve most of these benefits without the Internet. The most direct, most immediate way to reach these objectives is via broadband connections to the Internet.

Broadband has other uses, to be sure. It is used for cellular backhaul, in cable TV systems, for proprietary financial transaction networks and for other proprietary enterprise networks. While cellcos, cablecos and enterprises may need better broadband technologies for their own proprietary purposes, these uses don't rise to the level that would require a National Broadband Plan for "all people of the United States." The people of the United States already have reasonable telephone and television services; they need faster, more affordable, more ubiquitous, more reliable connections to the Internet.

Broadband is not the Internet. Broadband is shorthand for a diverse class of wired and wireless digital transmission technologies. The Internet, in contrast, is a set of public protocols for inter-networking systems that specifies how data packets are structured and processed. Broadband technologies, at their essence, are high-capacity and always-on. The essence of the Internet is (a) that it carries all packets that follow its protocols regardless of what kinds of data the packets carry, (b) that it can interconnect all networks that follow those protocols, and (c) its protocols are defined via well-established public processes.

There's risk in confusing broadband and Internet. If the National Broadband Plan starts from the premise that the U.S. needs the innovation, increased productivity, new ideas and freedoms of expression that the Internet affords, then the Plan will be shaped around the Internet. If, instead, the Plan is premised on a need for broadband, it fails to address the ARRA's mandated objectives directly. More importantly, the premise that broadband is the primary goal entertains the remaking of the Internet in ways that could put its benefits at risk. The primary goal of the Plan should be

broadband connections to the Internet.

The FCC's Internet Policy Statement of 2005 is a first attempt to codify important aspects of the Internet independent of access technology. It advocates end-user access to content, and end-user choice of applications, services and devices. It says that Internet users are, "entitled to competition," but it does not spell out the entitlement to the benefits of competition, such as increased choice, lower price and diversity of offers. It fails to provide for information about whether advertised services perform as specified. It doesn't address packet inspection, packet discrimination, data collection or end-user privacy. It is not clear that all of these are within the FCC's purview, but it is abundantly clear that all of these factors should be critical to a National Broadband Plan that addresses broadband connections to the Internet.

Therefore, we urge that the FCC's National Broadband Plan emphasize that broadband connection to the Internet is the primary goal. In addition, we strongly suggest that the Plan incorporate the FCC Internet Policy Statement of 2005 and extend it to (a) include consumer information that meaningfully specifies connection performance and identifies any throttling, filtering, packet inspection, data collection, et cetera, that the provider imposes upon the connection, (b) prohibit discriminatory or preferential treatment of packets based on sender, recipient or packet contents. Finally, we suggest that the Internet is such a critical infrastructure that enforcement of mandated behavior should be accompanied by penalties severe enough to deter those behaviors.

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